

HOUSE No. 2345

By Ms. Balser of Newton, petition of Ruth B. Balser and others relative to instituting a “throw back rule” in determination of the net income derived from business carried on within the Commonwealth. Revenue.

The Commonwealth of Massachusetts

PETITION OF:

Ruth B. Balser	J. James Marzilli, Jr.
Anne M. Paulsen	Patricia A. Haddad
Kay Khan	Susan C. Fargo
Deborah D. Blumer	Antonio F. D. Cabral
Peter V. Kocot	Matthew C. Partick
Patricia D. Jehlen	John W. Scibak

In the Year Two Thousand and Five.

AN ACT INSTITUTING A “THROW BACK RULE”.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 38 of Chapter 63 of the General Laws, as appearing in
2 the 1998 Official Edition, is hereby amended by striking out sub-
3 section (f) and inserting in place thereof the following:—
4 (f) The sales factor is a fraction, the numerator of which is the
5 total sales of the corporation in this commonwealth during the
6 taxable year, and the denominator of which is the total sales of the
7 corporation everywhere during the taxable year. As used in this
8 subsection, “sales” means all gross receipts of the corporation
9 except interest, dividends, and gross receipts from the maturity,
10 redemption, sale, exchange or other disposition of securities.
11 Sales of tangible personal property are in this commonwealth if:
12 1. the property is delivered or shipped to a purchaser within this
13 commonwealth regardless of the f. o. b. point or other conditions
14 of the sale; or
15 2. the corporation is not taxable in the state of the purchaser
16 and the property was not sold by an agent or agencies chiefly situ-

17 ated at, connected with, or sent out from premises for the transac-
18 tion of business owned or rented by the corporation outside this
19 commonwealth; or

20 3. the corporation is not taxable in the state of the purchaser
21 and the property is shipped from an office, store, warehouse, fac-
22 tory, or other place of storage in this commonwealth. “Purchaser”,
23 as used in clauses 1 through 3 of this paragraph, shall include the
24 United States government.

25 Sales, other than sales of tangible personal property, are in this
26 commonwealth if:

27 1. the income-producing activity is performed in this common-
28 wealth; or

29 2. the income-producing activity is performed both in and out-
30 side this commonwealth and a greater proportion of this income-
31 producing activity is performed in this commonwealth than in any
32 other state, based on costs of performance.

33 For the purposes of this subsection the corporation will be
34 deemed to be taxable in the state of the purchaser if the tangible
35 personal property is delivered or shipped to a purchaser in a for-
36 eign country; sales of tangible personal property to the United
37 States Government or any agency or instrumentality thereof for
38 purposes of resale to a foreign government or any agency or
39 instrumentality thereof are not sales made in this commonwealth;
40 and sales by a corporation to its wholly owned DISC shall be
41 treated as though made directly by such corporation to the cus-
42 tomer of such DISC.

43 Notwithstanding the foregoing, mutual fund sales by a mutual
44 fund service corporation as defined in subsection (m), other than
45 the sale of tangible personal property, shall be assigned to this
46 commonwealth to the extent that shareholders of the regulated
47 investment company are domiciled in this commonwealth as
48 follows:

49 (a) by multiplying the mutual fund service corporation’s total
50 dollar amount of sales of such services on behalf of each regulated
51 investment company by a fraction, the numerator of which shall
52 be the average of the number of shares owned by the regulated
53 investment company’s shareholders domiciled in this common-
54 wealth at the beginning of and at the end of the regulated invest-
55 ment company’s taxable year that ends with or within the mutual

56 fund service corporation's taxable year, and the denominator of
57 which shall be the average of the number of shares owned by the
58 regulated investment company shareholders everywhere at the
59 beginning of and at the end of the regulated investment company's
60 taxable year that ends with or within the mutual fund service cor-
61 poration's taxable year.

62 (b) A separate computation shall be made to determine the sale
63 for each regulated investment company, the sum of which shall
64 equal the total sales assigned to the commonwealth.

65 The commissioner shall promulgate regulations to implement
66 the provisions of this paragraph.